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In re Application of SIMOES
U.S. Application No.: 09/766,485
Int. Application No.: PCT/EP96/04945
Int. Filing Date: 12 November 1996
Priority Date: none
Attorney Docket No.: none
For: INSTRUMENT FOR THE MEDICAL OR
DENTAL TREATMENT OF CHILDREN

DECISION ON PETITION

UNDER 37 CFR 1.137(b)

This is in response to applicant's "Renewed Petition Under 37 CFR 1.137 (b)" filed 22 May 2002.

BACKGROUND

On 12 November 1996, applicant filed international application PCT/EP96/04945. A copy of the international application was communicated to the USPTO from the International Bureau on 22 May 1998. The twenty-month period for paying the basic national fee in the United States expired at midnight on 13 July 1998 (12 July 1998 was a Sunday).

International application PCT/EP96/04945 became abandoned as to the United States at midnight on 13 July 1998 for failure to pay the basic national fee.

On 18 August 1998, applicant filed United States national application number 09/135,486 under 35 U.S.C. 111.

On 04 April 2000, U.S. application number 09/135,486 issued as U.S. patent number 6,045,360.

On 19 January 2001, applicant filed reissue application number 09/766,485 along with a petition under 37 CFR 1.137(b).

On 22 March 2002, this Office mailed a decision dismissing the 19 January 2001 petition under 37 CFR 1.137(b) on grounds that applicant had not shown the abandonment to be unintentional.

On 22 May 2002, applicant filed the present renewed petition.

DISCUSSION

The renewed petition states that the applicant's actions were not deliberate. However, the facts of the present situation indicate otherwise. Specifically, the 18 August 1998 letter reveals that applicant's representative was aware that the application could be filed either under 35 U.S.C. 111 or 35 U.S.C. 371 and made a conscious decision not to seek revival of the international application. That the decision was based, according to the renewed petition, on a desire to defer the payment of fees indicates that the decision was characterized at the very least by presumed awareness of the implications (see *Webster's Third New International Dictionary* as cited by the renewed petition), whether or not the presumptions ultimately turned out to be correct.

The renewed petition further states that had applicant's representative gained knowledge of the issuance of the German patent, a different course of action would have been pursued. However, as noted in the decision mailed 22 March 2002, an intentional delay resulting from a deliberate course of action is not affected by the correctness of the applicant's or applicant's representative's decision to abandon the application or not to seek revival of the application and is not affected by the discovery of new information or evidence, or other change in circumstances subsequent to the abandonment or decision not to seek revival of the application. See MPEP 711.03(c), subsection III.D. Thus, the fact that applicant may have become aware of the German patent's effectiveness as prior art does not affect the intentional failure to seek revival of the international application.

The renewed petition additionally states that no authority has been cited for imposing a standard of deliberateness. However, such language appears in MPEP 711.03(c), subsection III.C.1 as specifically noted in the decision mailed 22 March 2002.

CONCLUSION

For the reasons above, the renewed petition under 37 CFR 1.137(b) is **DISMISSED** without prejudice.

If reconsideration on the merits of this petition is desired, a proper response must be filed within TWO (2) MONTHS from the mail date of this decision. Any reconsideration request should include a cover letter entitled "Renewed Petition Under 37 CFR 1.137(b)". No additional petition fee is due. Extensions of time are NOT available under 37 CFR 1.136.

Please direct further correspondence with respect to this matter to the Assistant Commissioner for Patents, Box PCT, Washington, DC 20231, and address the contents of the letter to the attention of the PCT Legal Office.



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